



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FTI/173037

PRELIMINARY RECITALS

Pursuant to a petition filed March 24, 2016, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on April 26, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether Petitioner's appeal is timely as to both notices of tax intercept issued to collect overissuances of FoodShare benefits as well as the underlying overpayment.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED] |
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner filed this appeal to contest an October 22, 2012 Notice of FoodShare Overissuance and a July 17, 2015 tax intercept notice.

3. Petitioner was sent three Notifications of FoodShare Overissuance all dated October 22, 2012. The notices informed Petitioner that her FoodShare household that had been overissued FoodShare benefits in the following amounts for the following time periods: \$4048.00 for the period from May 7, 2010 to April 30, 2011 (claim# [REDACTED]); \$2842.00 for the period of May 1, 2011 to April 30, 2012 (claim # [REDACTED]) and \$1457.00 for the period of May 1, 2012 to October 31, 2012 (claim# [REDACTED]). These notices were all sent to the correct address at the time.
4. Petitioner was sent a tax intercept notice dated July 17, 2015 that informed Petitioner that her taxes were subject to intercept to repay a public assistance debt and the three claims referenced at Finding # 3 were listed. The tax intercept was also sent to the address noted above.
5. The overpayment notices involved here and well as the tax intercept do contain appeal instructions.
6. This appeal was filed on March 24, 2016.

DISCUSSION

The State is required to recover all FoodShare overpayments. An overpayment occurs when a FoodShare household receives more FoodShare than it is entitled to receive. 7 C.F.R. §273.18(a). The Federal FoodShare regulations provide that the agency shall establish a claim against a FoodShare household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. §273.18(a)(2).

Once an overpayment is established, *Wis. Stat. § 49.85* provides that the department shall, at least annually, certify to the Department of Revenue the amounts that it has determined that it may recover resulting from overpayment of general relief benefits, overissuance of food stamps, overpayment of AFDC and Medical Assistance payments made incorrectly.

The Department must notify the person that it intends to certify the overpayment to the Department of Revenue for setoff from his/her state income tax refund and must inform the person that he/she may appeal the decision by requesting a hearing. *Id. at § 49.85(3)*.

The hearing right is described in *Wis. Stat. § 49.85(4)(b)* but is limited:

If a person has requested a hearing under this subsection, the department ... shall hold a contested case hearing under s. 227.44, except that the department ... may limit the scope of the hearing to exclude issues that were presented at a prior hearing or that could have been presented at a prior opportunity for hearing. (Emphasis added).

The time limit for filing an appeal of a tax intercept notice is 30 days. *§49.85(3)(a)2, Stats.*

As for the underlying overpayment, the Division of Hearings and Appeals can only make a decision on the merits of the matter it has jurisdiction, that is to say, legal authority to do so. One of the components of that legal authority is the requirement that an appeal be timely filed. For FoodShare cases an appeal must be filed within 90 days of the date of a negative action on the case by the agency. *See FoodShare Wisconsin Handbook (FSH), §6.4.1 and 7 CFR, §273.15(g)*.

The question here is whether or not Petitioner's appeal is timely as to the underlying overpayments as well as the tax intercept. The agency did send the proper notices to Petitioner's correct address as required by §49.85, Stats. This appeal was filed almost 4 years after the Notice of Overpayment and 9 months after the tax intercept. I also note that repayments have been made for some time without the filing of an appeal. I cannot find Petitioner's appeal to be timely as to the overpayment or tax intercept.

CONCLUSIONS OF LAW

1. That Petitioner's March 24, 2016 appeal is untimely with respect to the October 2012 notices of FoodShare overissuance.
2. That Petitioner's March 24, 2016 appeal is untimely with respect to the July 17, 2015 tax intercept notice.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 19th day of May, 2016

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on May 19, 2016.

Milwaukee Enrollment Services
Public Assistance Collection Unit